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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MELODY L. COCHRAN,

Plaintiff and Appellant,

v.

GREENPOINT MORTGAGE FUNDING,
INC.,

Defendant and Respondent.

B214890

(Los Angeles County
Super. Ct. No. BC358936)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Rolf M. Treu, Judge. Reversed.

Law Office of Louis P. Dell and Louis P. Dell for Plaintiff and Appellant.

Levinson Arshonsky & Kurtz, Richard I. Arshonsky and Karol H. Ingber for
Defendant and Respondent.

Plaintiff Melody L. Cochran ("Cochran") appeals the judgment in favor of Greenpoint Mortgage Funding, Inc. ("Greenpoint"), entered following the latter's successful motion for summary judgment. Because we conclude that there remains a triable issue of fact, we reverse the judgment.

FACTUAL AND PROCEDURAL SUMMARY¹

This is the third appeal arising out of plaintiff's attempt to quiet title to a residence located at 1526 North Avenue 50 in Los Angeles (the "Property"). The pertinent facts are these: Prior to her marriage to William Bennett, plaintiff inherited the Property from her grandmother as her sole and separate property. During the marriage, Bennett promised to manage the Property on plaintiff's behalf. In 1996, without plaintiff's knowledge or consent, Bennett caused plaintiff's signature to be forged on a grant deed, resulting in the transfer of record title to others. Through a series of subsequent transfers, Anthony H. Delonay, Bennett's business partner, became the record owner of the Property in 2003, at which time defendant Greenpoint recorded two Deeds of Trust on the Property. Plaintiff alleges that she learned of these fraudulent transfers of the Property in February 2004.

Plaintiff filed this suit for fraud and to quiet title to the Property on September 21, 2006; the operative second amended complaint was filed on August 24, 2007. In that complaint, plaintiff names as defendants Bennett, Delonay, Kristin Starr (the notary who attested to plaintiff's signature on the 1996 grant deed), and Greenpoint.

Bennett filed a motion for judgment on the pleadings together with a request for judicial notice of certain pleadings filed in the pending dissolution action between plaintiff and himself, which he maintained conclusively established that plaintiff learned of the fraud more than three years before this action was filed (i.e., before September 21, 2003). After the trial court took judicial notice of those pleadings, granted the motion on

¹ For purposes of this discussion, we accept as true the well-pleaded facts of the complaint.

the pleadings and dismissed the case against Bennett, Delonay and Starr filed a similar motion and request. They too won dismissal of the action.

Relying on the trial court's ruling as to the conclusive effect of the documents judicially noticed, Greenpoint filed both a motion for judgment on the pleadings and a motion for summary judgment, together with a request that the court take judicial notice of the same documents judicially noticed at the request of Bennett, Delonay and Starr. The trial court granted the motion for judicial notice, granted the summary judgment, and ruled that the motion for judgment on the pleadings was moot.

In its tentative decision, which became the ruling of the court, the trial court made reference to the matters judicially noticed, which included the following documents:

1. Plaintiff's dissolution petition filed on August 26, 2002, and specifically Attachment 4 thereto, a list of property as to which "Petitioner requests confirmation as separate property assets;" the Property does not appear on the list.
2. Plaintiff's Order to Show Cause filed on November 26, 2002, together with her supporting declaration. In this declaration, plaintiff expresses the shock she experienced when she learned that she "was married to a professional 'con-man' with a litany of prior criminal activities." She also references a "home" which she "lost" on account of Bennett's actions: "As I look back on our relationship, I realize that [Bennett] caused me to lose my first home . . ." and "As I have indicated above, prior to our marriage I lost my home as a direct result of my having completely, albeit foolishly, trusting [Bennett]."
3. Plaintiff's response to form interrogatories propounded in the dissolution action, in which she states that Bennett "indicated to me that I was still an owner of my residence, which I had prior to the incident, located at 55026 [sic] North Avenue 50, Los Angeles, California. [Bennett] indicated he would be deeding that back to me, even though it was in my name prior to our marriage."

In response to defendant's motion for summary judgment, plaintiff submitted her declaration explaining what she had meant when she made the statements relied on by the court to establish the bar of the statute of limitations: "In 2002, I filed for dissolution of my marriage from Bennett. Since I never thought or believed that Bennett had any claim or title to my house, it did not occur to me that any order from the family law court against Bennett regarding my own separate house was necessary or proper and I made no such request. In my dissolution case, in approximately 11/02, I sought support and attorney fees from Bennett where I stated that I had lost my home, by which I meant to state that I had lost the control of my house because Bennett was no longer telling me about the rents or expenses. In approximately 12/02 I recited in answers to interrogatories Bennett's statement to me that I was still the owner of my house and that he would be 'deeding' it back to me, a statement I considered utter nonsense since as far as I knew I had always been the owner and he never had any title to my house."

In its tentative decision, the trial court stated that it had "previously found, in connection with other defendants' motions for judgment on the pleadings, that the foregoing evidence is sufficient to support a finding that Plaintiff knew of Defendant's forgery more than three years before she filed this action. The Court makes the same finding at this time," and entered judgment against Cochran. The court made no mention of the evidence which plaintiff proffered to establish a triable issue of fact regarding her lack of knowledge of Bennett's forgery in the relevant time frame.

Plaintiff timely appealed the judgment.

STANDARD OF REVIEW

"Summary judgment is properly granted when the evidence in support of the moving party establishes that there is no issue of fact to be tried. [Citations.] The trial court must decide if a triable issue of fact exists. If none does, and the sole remaining issue is one of law, it is the duty of the trial court to determine the issue of law." (*Torres v. Reardon* (1992) 3 Cal.App.4th 831, 836.)

"[W]e review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 334.) "This court exercises its independent judgment as to the legal effect of the undisputed facts disclosed by the parties' papers. In so doing, we apply the same three-step analysis required of the trial court: We first identify the issues framed by the pleadings, since it is these allegations to which the motion must respond. Secondly, we determine whether the moving party has established facts which negate the opponents' claim and justify a judgment in the movant's favor. Finally, if the summary judgment motion *prima facie* justifies a judgment, we determine whether the opposition demonstrates the existence of a triable, material factual issue." (*Torres v. Reardon, supra*, 3 Cal.App.4th at p. 836, internal citations omitted.)

DISCUSSION

In its motion for summary judgment, Greenpoint submitted evidence to establish that plaintiff knew that she did not hold title to the Property more than three years before she filed suit. Had plaintiff failed to submit evidence to controvert Greenpoint's evidence, then Greenpoint would have been entitled to summary judgment. However, plaintiff did submit evidence contradicting that of Greenpoint. The sole question before the trial court on the motion for summary judgment was whether plaintiff's evidence raised a triable issue of material fact requiring trial. The court impliedly ruled that it did not. We disagree.

Plaintiff's evidence, by way of declaration, was that she did not learn that Bennett had caused the Property to be transferred out of her name until February 2004. Plaintiff explained that she did not list the Property as her separate property on Attachment 4 to the dissolution petition because there was never any question but that it was her sole and separate property, and she therefore saw no need to ask the court to confirm that fact. She further explained that when she spoke of the "loss" of her house in a November 2002

declaration, she was not referring to a loss of title, but to the loss of its use and the rents flowing from it. Finally, in reference to her answer to an interrogatory which recited that Bennett had told her "that I was still the owner of my house and that he would be 'deeding' it back to me," plaintiff declared that she "considered [the statement] utter nonsense since as far as I knew I had always been the owner and he never had any title to my house." Plaintiff also notes in her brief on appeal that this statement – "which states both ownership and lack of ownership" – is "contradictory and uncertain" and thus cannot possibly establish the state of her knowledge on the date in question.

In sum, plaintiff submitted evidence to contradict Greenpoint's "undisputed fact" that plaintiff knew that she had no rights in the Property more than three years prior to filing this lawsuit. Consequently, the motion for summary judgment was improperly granted.

DISPOSITION

The judgment is reversed. Cochran is to recover her costs on appeal.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.